

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 April 2020

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
PO Box 3167
Stafford
ST16 9JZ

Decision (including any steps ordered)

1. The complainant has requested details about a death by dangerous driving that occurred in 1967, from Staffordshire Police ("SP"). SP advised that it did not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, no information is held. No steps are required.

Request and response

3. On 12 September 2019, the complainant wrote to SP and requested information in the following terms:

"I wish to look at your records re a death by dangerous driving from November 1967 in Cannock. The deceased was my brother, [name redacted], who was 23 at the time of his death. I believe the vehicle involved was a Mini. He was taken to Stafford Infirmary where he died. What I was told about the incident (I was 16 at the time) does not match with what I have recently learned and I would very much like to find out what happened. As far as I know, the driver was not prosecuted as he failed to turn up at court and I was told that the police thought he had absconded to Ireland".

4. SP responded on 18 September 2019 and denied holding the requested information.

5. Following an internal review, SP wrote to the complainant on 10 October 2019. It maintained its position.

Scope of the case

6. On 29 October 2019, the complainant wrote to the Commissioner, to complain about the way her request for information had been handled. She advised that she was "*more than a little dismayed*" that SP had advised that no information was held as: "*.. surely, this matter is still an open, unsolved case*".
7. The Commissioner will consider whether, on the balance of probabilities, SP holds the requested information.
8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
10. In this case, the complainant suspects that SP holds information from which it could answer the request. SP's position is that it does not. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
11. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public

authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held.

12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

13. When requesting an internal review the complainant stated:

1. *My brother died on [date redacted] at Stafford Infirmary as a result of dangerous driving.*
2. *As far as I know, the driver of the car in which my brother was travelling was under a charge of manslaughter.*
3. *As far as I know, the driver absconded before he got to trial*
4. *As a result of the above, this is an unsolved crime and as such should still be in police records*
5. *I feel that the response to my FOI request by Staffordshire Police was a cursory dismissal because this case is a very old one*
6. *I strongly feel that I am entitled to know the details of my brother's death and what actions the police took at the time*

14. In her complaint to the Commissioner she added:

"... As you can see, they were unable to find any information about the details of my brother's death. I am more than a little dismayed that this is the case, as, surely, this matter is still an open, unsolved case.

In the late summer of 1969, my father received a letter from Knights Solicitors, who were acting for the police in this matter ... I ... attended in my father's place.

Knowing very little about the law and being bereaved myself, I really wasn't qualified to fully understand the importance of this meeting. In short, I was asked whether I wanted to pursue the case any further, and I declined.

In retrospect, I am confused as to why I was asked this. It is not up to members of the victim's family whether to proceed with a case of manslaughter, it is up to the police. I heard nothing more from either Knights or Staffordshire police, and to reiterate, what I was told in 1967 ... does not gel with what I have since learned from someone I have recently re-connected with ...

I respectfully request, therefore, that you undertake thorough research into this matter since my understanding is that the charge of manslaughter is still live. As such, there must be records held by the police”.

Staffordshire Police’s view

15. During the course of her investigation, the Commissioner asked SP questions, as is her usual practice, relating to how it established whether or not it held information within the scope of the request.

16. In explaining its position to the Commissioner, SP confirmed that records from 1967 would have been held in a manual format only, adding, in respect of the Police National Computer (PNC), that:

“PNC went live in 1974 and only holds defendants details, prior to this there were only locally held manual records”.

17. In respect of the searches it has undertaken, and why they were the most appropriate searches to do, it explained:

“Searches have been conducted with Justice Services Support Unit who manage criminal case files, the warrants management system which holds details of fail to appear warrants (the oldest recorded being from 1985), Traffic Collision Unit who manage traffic collision files, Force Archives who manage archived files, Major Investigation Dept. who hold all serious crime records, Staffordshire Records Office and Staffordshire County Council Records Centre who have had some archived police files in the past”.

18. SP said that as there was no electronic system back in 1967, the departments listed above had checked their current electronic systems with the limited information provided by the applicant, ie the deceased’s name.

19. SP confirmed that there were no records which indicated whether the information had ever been held and since destroyed.

20. In respect of its formal records management policy, SP advised:

“Today this would be a MOPI [Management of Police Information] 1 category offence which means records would be kept for 100 years (offender age). MOPI was not in place in 1967”.

21. SP also advised the Commissioner that:

“If the defendant had been arrested/charged/failed to appear at court then the case file would be kept until the defendant was

located and put before the court to progress the case and then subsequently held in line with retention policies as described above”.

22. The Commissioner queried this statement as it suggested that information ‘should’ therefore be held. However, she was advised that this standard was set under the current MOPI rules, and the rules which were applicable in 1967 were not known.

23. The Commissioner also notes that the complainant is of the belief that the alleged perpetrator was charged with both ‘death by dangerous driving’ and ‘manslaughter’. She queried whether this would have been feasible in 1967 and was advised:

“Causing death by reckless or dangerous driving would have been covered by the Road Traffic Act 1960. Manslaughter would have been covered by the Homicide Act 1957... Today alternative charges are only brought through advice/discussion with CPS it is not known what would have happened in 1967”.

24. The Commissioner also queried whether *any* records of this type were held from 1967, and, if so, whether they were held by reference to the aggrieved party (even if deceased) or the defendant. SP advised:

“We do have records back as far as 1946 that cover this type of offence and those records contain both the victim and the alleged offender details. There is also a separate record of deaths whereby there are only the victims details, in other words they are with the case review team as ‘unsolved’ as the offender is unknown but it would have to have been considered as homicide to be retained on this list”.

25. It confirmed that these records had been checked for the deceased’s name, with no success.

26. Regarding the contact which the complainant says was made in 1969, and the decision not to pursue matters at that time, the Commissioner asked whether or not this may have resulted in any records having been destroyed at that time. SP advised that, unfortunately, it did not know the answer to this as it was such a long time ago.

The Commissioner’s conclusion

27. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set

out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.

28. The Commissioner considers that SP contacted the relevant departments to ascertain whether or not any information was held in respect of the request. Based on the information provided, and in view of the considerable time that has elapsed since the incident to which the request relates, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. She is therefore satisfied that SP has complied with the requirements of section 1 of the FOIA in this case.

Other matters

29. Although they do not form part of this notice the Commissioner wishes to highlight the following.
30. As part of her enquiries, the Commissioner asked SP whether, if the complainant knew the suspect's name, it might be able to conduct further searches. SP responded saying:

"Yes we would be able to search the Police National Computer however, this was not introduced until 1974 so there may not be a record of the offender unless it had been manually added as an old record from microfiche".

31. Although this would fall outside the scope of the current case, this may be an option which is available to the complainant. However, it must be borne in mind that, even were information available, it may not be suitable for disclosure to the world under FOIA and exemptions may be applied.

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Carolyn Howes
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